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# United Merchant Finance Bhd v Hockwood Holdings Sdn Bhd & Ors

HIGH COURT (IPOH) — CIVIL SUIT NO 22–64 OF 1998
CLEMENT SKINNER JC
6 NOVEMBER 1998

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***Contract*** *— Guarantee — Demand for payment — Term loan — Second and third defendants executed joint and several guarantee in favour of plaintiff — Default by first defendant — Plaintiff sent notices of demand to third defendant at address not in guarantee — Whether prior demand on guarantors a condition precedent to liability — Whether there was sufficient demand here*

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***Contract*** *— Guarantee — Construction — 'Revolving credit facility' used in recital to guarantee — Words did not appear again — Facility described clearly in guarantee — Whether 'revolving credit facility' a typographical error — Whether guarantee enforceable in present wording*

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The plaintiff granted the first defendant a term loan of RM2m ('the facility'). Following acceptance of the facility, the second and third defendants executed a joint and several guarantee in favour of the plaintiff. The first defendant defaulted and the plaintiff demanded the sum of RM119,761.33 from the first, second and third defendants. The defendants failed to pay and the plaintiff, by letter to all three

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defendants, declared that the facility had terminated and demanded payment of the total outstanding balance. The defendants again defaulted in payment and the plaintiff obtained summary judgments against the first and second defendants. However, the deputy registrar dismissed the plaintiff's application for summary judgment against the

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third defendant. The plaintiff appealed against this decision.

The third defendant submitted that a demand was a condition precedent to liability but no such demand was made, or if a demand had been made, it was sent to an address not allowed for in the guarantee. He further contended that since the first preamble to the guarantee recited that the plaintiff had made available a 'revolving

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credit facility', what the third defendant had obliged himself to repay was a revolving credit facility; since the plaintiff was claiming the repayment of a term loan facility, the third defendant was not liable to pay under the guarantee.

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**Held**, allowing the appeal:

(1) When the guarantee was read as a whole, it was clear that there were no words in any of the clauses in this guarantee which made a prior demand on the guarantors a condition precedent to liability. The words conferred on the plaintiff a right to request the third defendant to pay in the circumstances stated in the clause.

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In the present circumstances, the plaintiff sending notices of demand to addresses other than that stated in the guarantee would not make any difference as the filing and service of the writ

herein on the third defendant constituted a sufficient demand obliging the third defendant to pay. This issue raised by the respondent would, therefore, not afford the third defendant a defence requiring to be tried (see pp 91I and 92D–G).

(2) Construing the guarantee document as a whole, the words 'revolving credit facility' were a typographical error because apart from this one appearance of these words in the recital to the guarantee, they do not appear again in the guarantee or in any other relevant document. As the words in the operative part of the guarantee in so far as they described the facility granted were very clear, they could not be controlled by the words in the recital. The guarantee was, therefore, perfectly enforceable in its present wording and despite the error in the recitals, the guarantee had not lost its contractual efficacy because what the third defendant had obliged himself to become liable for was the repayment of the term loan (see pp 93E and 94D–F).

**[Bahasa Malaysia summary**

Plaintif telah memberi kepada defendan pertama satu pinjaman berpenggal berjumlah RM2m ('kemudahan tersebut'). Berikutan daripada penerimaan kemudahan tersebut, defendan-defendan kedua dan ketiga telah melaksanakan satu jaminan bersama dan berasingan yang memihak kepada plaintif. Defedan pertama telah gagal membuat pembayaran balik dan plaintif telah menuntut sejumlah RM119,761.33 daripada defendan-defendan pertama, kedua dan ketiga. Defendan-defendan tersebut telah gagal membuat pembayaran dan plaintif, melalui surat kepada ketiga-tiga defendan, telah mengisytiharkan bahawa kemudahan tersebut telah pun ditamatkan dan menuntut baki keseluruhan bagi jumlah yang belum dibayar. Defendan-defendan telah sekali lagi gagal untuk membuat pembayaran dan plaintif telah mendapatkan penghakiman terus terhadap defendan pertama dan kedua. Bagaimanapun, timbalan pendaftar telah menolak permohonan plaintif untuk penghakiman terus terhadap defendan ketiga. Plaintif telah merayu terhadap keputusan ini.

Defendan ketiga telah menghujahkan bahawa satu tuntutan adalah syarat terdahulu kepada liabiliti tetapi tiada sebarang tuntutan telah dibuat, ataupun jika ia telah dibuat, ianya telah dihantar kepada alamat yang tidak dibenarkan di dalam jaminan. Dia selanjutnya menegaskan bahawa memandangkan mukadimah pertama kepada jaminan tersebut menyebut bahawa plaintif telah menyediakan satu 'kemudahan kredit pusingan', apa yang defendan ketiga telah mempertanggungjawabkan dirinya untuk membayar semula adalah terhadap satu 'kemudahan kredit pusingan'; memandangkan plaintif telah menuntut pembayaran balik satu kemudahan pinjaman berpenggal, defendan ketiga adalah tidak bertanggungjawab untuk membayar di bawah jaminan tersebut.

**Diputuskan**, membenarkan rayuan:

(1) Apabila jaminan tersebut dibaca secara keseluruhannya, adalah jelas bahawa tidak terdapat perkataan-perkataan di dalam mana-mana fasal jaminan ini yang membuat satu tuntutan terdahulu ke atas penjamin-penjamin satu syarat terdahulu kepada liabiliti. Perkataan-perkataan tersebut memberi kepada plaintif satu hak untuk meminta defendan ketiga supaya membayar di dalam hal keadaan yang dinyatakan di dalam fasal tersebut. Di dalam hal keadaan sekarang, plaintif menghantar notis-notis tuntutan kepada alamat-alamat selain daripada yang dinyatakan di dalam jaminan tidak akan membuat apa-apa perbezaan kerana pemfailan dan penyampaian writ di dalam kes ini ke atas defendan ketiga mewujudkan satu tuntutan yang lengkap bagi mempertanggungjawabkan defendan ketiga untuk membayar. Isu ini yang dibangkitkan oleh penentang tidak akan memberikan defendan ketiga satu pembelaan yang perlu dibicarakan (lihat ms 91I dan 92D–G).

(2) Dengan mentafsir dokumen jaminan tersebut secara keseluruhan, perkataan 'kemudahan kredit pusingan' adalah satu kesalahan tipografi kerana selain daripada kemunculan sulung perkataan ini di dalam sebutan permulaan jaminan tersebut, ianya tidak lagi kelihatan di dalam jaminan tersebut atau di dalam mana-mana dokumen lain yang berkaitan. Memandangkan perkataan-perkataan di dalam bahagian operatif jaminan tersebut, yang menjelaskan kemudahan yang telah diberikan, adalah begitu jelas, perkataan-perkataan tersebut tidak boleh dikawal oleh perkataan-perkataan di dalam sebutan permulaan. Jaminan tersebut boleh dikuatkuasakan dengan sempurna berdasarkan perkataan-perkataan asalnya dan, walaupun terdapat kesalahan di dalam sebutan permulaan, jaminan tersebut tidak akan kehilangan keberkesanan kontraknya kerana apa yang defendan ketiga telah mempertanggungjawabkan dirinya sendiri adalah terhadap pembayaran balik pinjaman berpenggal tersebut (lihat ms 93E dan 94D–F).]

## Notes

For cases on demand for payment, see 3 *Mallal's Digest* (4th Ed, 1997 Reissue) paras 2299–2305.

For cases on construction of guarantee, see 3 *Mallal's Digest* (4th Ed, 1997 Reissue) paras 2271–2284.

## Cases referred to

*Bank Negara Malaysia v Mohd Ismail & Anor* [1992] 1 MLJ 400 (refd)

*Kwong Yik Bank Bhd v Transbuilder Sdn Bhd & Ors* [1989] 2 MLJ 301 (refd)

*Leggot v Barnett* (1880) 15 Ch D 306 P 311 (refd)

*Mok Hin Wah v United Malayan Banking Corp Bhd* [1987] 2 MLJ 610 (refd)

*Ng Siew Wah & Ors v MAA Holdings Sdn Bhd & Anor* [1985] 2 MLJ 332 (refd) A

*Orang Kaya Menteri Paduka Wah Ahmad Isa Shukri b Wan Rashid v Kwong Yik Bank* [1989] 3 MLJ 155 (refd)

*Public Bank Bhd v Chan Siok Lie & Ors* [1989] 2 MLJ 305 (refd)

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**Legislation referred to**

Rules of the High Court 1980 O 14 r 1(1)

*Lee Yen Lyn* (*Chan & Associates*) for the plaintiff.

*A Mariadass* (*Mariadass Lock & Ainuddin*) for the defendant.

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**Clement Skinner JC**: This is an appeal against the decision of the learned deputy registrar, who on 2 September 1998, dismissed the application of the plaintiff for summary judgment under O 14 r 1(1) of the Rules of the High Court 1980 against the third defendant in this suit. Summary judgment had already been obtained against the first and second defendants. D

The facts leading up to this appeal may be shortly stated. The plaintiff, a licensed finance company, on 1 July 1996 granted to Hockwood Holdings Sdn Bhd ('the first defendant') a term loan of RM2m ('the facility'). The letter of offer dated 16 April 1996 setting out the terms and conditions upon which the facility was offered states, inter alia, that the facility is to be made available in two tranches. The first tranche, for a sum not exceeding RM1m, was to redeem property charged to Mayban Finance Bhd. The second tranche, being the balance of the facility, was for working capital to part finance the construction of 54 units of shophouses being developed by the first defendant. One of the terms set out in the letter of offer is that a joint and several guarantee from persons named as Wong Yee Hee (who is the second defendant) and Yeoh Kheng Hian, the third defendant, be executed. Though this is not stated in the letter of offer, both the second and third defendant were at the material time the only two directors of the first defendant. E F

Following acceptance of the offer of the facility, the first defendant on 1 July 1996 entered into a facility agreement ('the facility agreement') and on the same day, the second and third defendant executed a joint and several guarantee in favour of the plaintiff. G

The facility has been duly utilized by the first defendant who had defaulted in complying with the terms of the facility agreement. Accordingly on 24 December 1997, the plaintiff through its solicitors demanded from the first defendant as well as the second and third defendants a sum of RM119,761.33 being interest in arrears. On failure of the abovenamed defendants to pay, the plaintiff through its solicitors on 6 February 1998, pursuant to the facility agreement, by letter addressed to the first, second and third defendants declared that an event of default had occurred; that the facility had become terminated and demanded payment of the total outstanding balance of RM2,152,517.59 as at 9 January 1998. H I

A On failure of the first, second and third defendant to pay pursuant to the above demand, the plaintiff on 23 February 1998 commenced these proceedings by issuing a writ of summons with a statement of claim endorsed thereon.

The third defendant has filed a defence which discloses three main B grounds on which he seeks to resist the plaintiff's claim, namely: (a) that it was a condition of the guarantee that a prior demand must be made upon the third defendant before institution of any legal proceedings — in other words, a demand was a condition precedent to liability but that no such demand was made or if a demand had been made it was sent to an address not allowed for in the guarantee; (b) what the third defendant had C guaranteed was a revolving credit facility of RM2m and not a term loan wherefore he is discharged of his obligations under the guarantee; and (c) the plaintiff had permitted about RM1m of the facility to be utilized for purposes other than that stated in the facility agreement wherefore the third defendant is not liable under the guarantee.

D At the hearing of the summary judgment application, notwithstanding the three defences pleaded, the only issue argued before the learned deputy registrar was ground (a) abovementioned. The learned deputy registrar found that since the plaintiff had sent its notices of demand to the third defendant at three addresses but not to the address as stipulated in the guarantee document, there had been no demand made on the third E defendant in accordance with the guarantee and accordingly dismissed the plaintiff's application for summary judgment.

An appeal to a judge in chambers from a decision of a registrar proceeds by way of a rehearing and therefore, the parties are at liberty to take up and argue issues not argued before the registrar. This is what both counsel availed themselves to and learned counsel for the plaintiff, Ms Lee Yen Lyn, F addressed me on all three grounds mentioned above. However, Mr Mariadass, learned counsel for the third defendant, addressed me on the first and second grounds but informed me that he would not make any submission on the third ground abovementioned as he was abandoning the same. I accordingly need only consider the first two grounds raised.

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*Was a demand a condition precedent to liability under the guarantee?*

The reason the third defendant relies upon this ground is because by cl 18.1 of the guarantee, any notices, demands or requests required or permitted to be given or made under the guarantee upon the guarantors 'may be H delivered at or sent by prepaid registered post or by telex, facsimile or cable to the respective address or addresses specified hereunder or to such other address as shall at the relevant time have been notified by them for that purpose'. Clause 18.1 then goes on to state that the address of the third defendant is '15 Jalan Sultan Iskandar, 30000 Ipoh, Perak'.

It is a fact and not disputed by both parties that when the plaintiff's I solicitors sent the notices earlier mentioned to the respondent, the first dated 24 December 1997 demanding payment of arrears of interest on the facility amounting to RM119,761.33 and then the second on 6 February

1998 giving notice of termination of the facility and demanding payment of the total outstanding of RM2,152,517.59, both these notices were sent by registered post to the third defendant at the following three addresses:

(a) 32 B, Jalan Kin Mee
off Jalan Ghazali Jawi,
31400 Ipoh.

(b) 4, Jalan Dato Khong Kam Tak,
31400 Ipoh; and

(c) 29, Jalan Dato Seri Ahmad Said,
30450 Ipoh.

It should be noted that none of these addresses have been notified to the plaintiff as the address to which notices may be sent to the third defendant. The plaintiff explains that the notices and demands were sent to the third defendant at the first address as that is the business address of the first defendant and also the postal address of the third defendant. The notices were sent to the second address as it is his residential address as stated in his identity card.

The third defendant had accordingly seized upon the above facts and said that since these notices and demands were sent to addresses other than that as allowed by cl 18.1 of the guarantee, no prior demand has been made on him under the guarantee and therefore, there is no obligation to pay.

The third defendant would be correct in his assertion if by the terms of the guarantee, the parties have made it a condition that before an obligation to pay under the guarantee can arise there should first be a demand for payment made on the guarantor. The third defendant no doubt seeks to rely on the authority of cases such as *Mok Hin Wah v United Malayan Banking Corp Bhd* [1987] 2 MLJ 610 and *Orang Kaya Menteri Paduka Wah Ahmad Isa Shukri bin Wan Rashid v Kwong Yik Bank* [1989] 3 MLJ 155, which are to the effect that if by the terms of a guarantee a demand on a guarantor is a requirement, a proper demand must be made on a guarantor and such a demand is a condition precedent to establishing a claim against a guarantor. Do the terms of the present guarantee then impose on the plaintiff such a requirement?

Learned counsel for the third defendant says cl 2.2 of the guarantee clearly makes a demand a condition precedent. Since the whole of cl 2 will be relevant in deciding this issue I set it out here and underline the particular part of cl 2.2 relied upon by counsel:

> Covenant to repay
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> 2.1 In consideration of the lender at the request of the borrower and the guarantors making available to the borrower the facility, the guarantors hereby jointly and severally unconditionally and irrevocably guarantee as principal debtors and not merely as sureties to the lender the repayment by the borrower or the facility together with interest thereon and all costs charges and all other sums payable by the borrower to the lender under or pursuant to the provisions of the security documents and the due performance and observance of all the agreements, covenants and undertakings on the part of the borrower therein contained.

> 2.2 In the event the borrower failing to observe and perform any of the covenants, undertakings, stipulations and terms contained in the security documents on the part of the borrower to be observed and performed the lender shall notwithstanding anything to the contrary contained in the security documents *be entitled to demand repayment in full from the guarantors of the whole of the facility* or such amount as may be outstanding including all interest costs and charges that are payable by the borrower pursuant to the security documents. (Emphasis added.)

Learned counsel for the plaintiff contends that the words of cl 2.2 underlined above do not make a demand upon the guarantor a condition precedent to liability and that the guarantee this court is concerned with in this appeal is not what can be termed a 'demand guarantee' and that when the various other clauses are read, this becomes clear.

After listening to both counsel, I felt I needed to be addressed further on the law and authorities in relation to what constitutes a demand guarantee. I accordingly adjourned the hearing to 14 October 1998.

At the resumed hearing, I was referred by counsel for the plaintiff to two authorities, namely *Public Bank Bhd v Chan Siok Lie & Ors* [1989] 2 MLJ 305 and *Kwong Yik Bank Bhd v Transbuilder Sdn Bhd & Ors* [1989] 2 MLJ 301. Both are decisions of Shankar J (as he then was). In the case of *Public Bank Bhd v Chan Siok Lie & Ors*, the learned judge cautioned that the case of *Mok Hin Wah & Ors v United Malayan Banking Corp Bhd* should be applied with care as *Mok Hin Wah*'s case will only apply if the words of the guarantee specifically make a prior demand a condition precedent to suing the guarantor. Shankar J then went on to say at p 308:

> There is no general rule that in all cases, regardless of the terms of the document, a prior precise demand is a sine qua non to the commencing of an action. Nor is there any general rule that a prior notice must be given in all cases. The writ itself is a notice: See *Malayan Banking Bhd v Lim Chee Leng* [1985] 1 MLJ 214. A far clearer exposition of the law on the point is given in O'Donovan's *Modern Law of Guarantee* at pp 379–382. At p 380 of the text, it says that even though the amounts under the guarantee are expressed to be payable 'on demand', the inclusion of a 'principal debtor' clause in the body of a guarantee may obviate the necessity for the creditor to make a demand. Thus, I hold that where the effect of a guarantee agreement is to make the guarantors principal debtors, the necessity for a demand could be obviated because the character of the agreement under which payment is sought is no longer strictly collateral.

I will not refer to the decision in the case of *Kwong Yik Bank Bhd v Transbuilder Sdn Bhd & Ors* since the decision was overruled on appeal.

Learned counsel for the third defendant, at the resumed hearing, informed me that in view of the authorities above cited and because by cl 2.1 of the guarantee in this case the guarantors had agreed to be principal debtors and not just sureties, he was unable to contend that the guarantee the court is now considering is an 'on demand' guarantee. In my view, learned counsel for the third defendant has very properly made the concession. When the guarantee is read as a whole, it becomes clear that there are no words in any of the clauses in this guarantee which make a prior demand on the guarantors a condition precedent to liability. Further, by cl

2.1, the liability of the third defendant was 'as principal debtor and not merely as surety'. Such liability as principal debtor is further amplified in two other clauses. The first is cl 4.1 whereby it is provided that any obligation of the respondent as guarantor shall not be discharged except by performance only and not be subject 'to any prior notice to or demand to the guarantor with regard to any default of the borrower'. The second is cl 5.3 which states that: 'Independently of any other terms conditions and stipulations herein, the obligation of each guarantor shall not be affected by any act, omission, fact circumstance, matter or thing which, but for this provision, might operate to release or otherwise any guarantor from his obligations hereunder (to be intent that the guarantor shall be liable as sole and principal debtor for all amounts demanded from the guarantor by the lender hereunder) including without limitation'.

The plaintiff by the terms of the guarantee abovementioned is clearly entitled to look to the third defendant as principal debtor for payment of a present debt owing as opposed to a collateral debt and without having to give to the third defendant any prior notice or demand in respect of any default having been made by the first defendant.

With reference to the words relied upon by the third defendant in cl 2.2 to indicate that a prior demand is a condition precedent to liability, I am of the view that when the whole clause is read and the underlined words considered in their context as well as with regard to the other terms of the guarantee, what these words really do is to confer on the plaintiff a right to request the third defendant to pay in the circumstances stated in the clause as opposed to imposing a condition precedent as contended for by the third defendant.

In the above circumstances, and as it is conceded by learned counsel for the third defendant that this guarantee is not a 'demand guarantee', I find that the plaintiff sending notices of demand to addresses other than that stated in cl 18.1 of the guarantee would not make any difference in this case as the filing and service of the writ herein on the third defendant constituted a sufficient demand obliging the third defendant to pay. This issue raised by the respondent would therefore not afford the third defendant a defence requiring to be tried.

*Did the third defendant guarantee a revolving credit facility or a term loan facility?*

When the guarantee is read, the first preamble recites as follows:

> Whereas:
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> (A) At the request of Hockwood Holdings Sdn Bhd a company incorporated in Malaysia and having its registered office at 48B, Jalan Che Wan, 30250 Ipoh, Perak and a place of business at 32B, Jalan Kin Mee, off Jalan Ghazali Jawi, 31400 Ipoh, Perak (hereinafter referred to as 'the borrower') and the guarantors, the lender has by a facility agreement dated 1 July 1996 (the contents of which the guarantors hereby acknowledge) agreed to make available to the borrower revolving credit facility in the maximum aggregate principal amount of Ringgit Malaysia

A Two Million (RM2,000,000) only (hereinafter referred to as 'the facility' which expression shall include wherever the context so permits any balance or part thereof) in the manner and upon the terms and conditions set out in the facility agreement.

The third defendant now contends that since the above preamble recites B that the plaintiff has made available 'revolving credit facility', what the third defendant has obliged himself to repay by executing the guarantee is revolving credit facilities. Since however the plaintiff made available to the first defendant a term loan, and is claiming the repayment of a term loan facility, the third defendant is not liable to pay under the guarantee.

The plaintiff has in an affidavit sworn by its branch manager Mr Tan C Pek Kim, on 7 May 1998, explained that the words 'revolving credit facility' appearing in recital (A) of the guarantee is a typographical error but that cl 1.1 of the guarantee expressly defines the 'facility' as a term loan facility and that the third defendant as director of the first defendant was aware at all material times of the nature of the facility granted. Learned counsel for the third defendant submits that if it is a typographical error, then the D plaintiff should first rectify the error by a proper application to court since the third defendant is being sued on the basis of the guarantee.

Now, based on the documentary and affidavit evidence filed in respect of the O 14 application, and reading and construing the guarantee document as a whole, I accept the explanation that the words 'revolving E credit facility' were a typographical error because apart from this one appearance of these words in the recital to the guarantee, they do not appear again in the guarantee or in any other relevant document.

Since there is a typographical error in the recital to the guarantee and since the third defendant has used this fact to raise a defence, and bearing F in mind that this is an application for summary judgment, I have a duty to go a step further and to look at the issue raised to subject it to closer curial scrutiny to determine, in the exercise of my judicial discretion, whether or not the issue raised is really worthy of an airing at a full trial or whether, in the words of Mohd Azmi SCJ, who was speaking for the (then) Supreme Court in the case of *Bank Negara Malaysia v Mohd Ismail & Anor* [1992] G 1 MLJ 400, 'the assertion denial or dispute is equivocal, or lacking in precision or is inconsistent with undisputed contemporary documents or other statements by the same deponent or is inherently improbable in itself', so that the issue raised is rendered not triable at all.

During her submissions, learned counsel for the plaintiff drew the H court's atention to the following documents:

(a) the letter of offer where the facility is clearly referred to as a term loan to be made available in two tranches;

(b) the facility agreement dated 1 July 1996 where in the recital thereto, the facility is described as a term loan, and more importantly, in cl 2.1 I which is a definition clause, the word 'facility' is defined as 'the term loan facility in the maximum aggregate principal amount of RM2m'; and

(c) the guarantee, where despite what is stated in the recital, cl 1.1 of the guarantee, which is a definition clause specifically defines 'facility' as 'the term loan facility to be made available to the borrower by the lender under the facility agreement and referred to as recital (A) hereof'.

What is stated above shows the assertion of the third defendant to be clearly inconsistent with the contents of contemporary documents because the term 'facility' is expressly defined in the facility agreement as well as the guarantee itself, to refer to the term loan of RM2m and not a revolving credit facility. Further, it must not be overlooked that the words 'revolving credit facility' appear in the recitals to the guarantee merely by way of an introduction. What the plaintiff seeks to enforce against the third defendant is the obligations agreed to by the third defendant in the terms and conditions stated in the operative part of the guarantee, and in particular, the covenant to repay the facility which is stated in cl 2 of the guarantee. As the words in the operative part of the guarantee in so far as they describe the facility granted are very clear, they cannot be controlled by the words in the recital. The case of *Leggot v Barnett* (1880) 15 Ch D 306 P 311 is authority for the proposition that where the words in the operative part of a document are clear and not in doubt, the rights of the parties are governed entirely by the operative part of the document. In other words, the clear words of the operative part of a document cannot be controlled by recitals. I find the guarantee is perfectly enforceable in its present wording and despite the unfortunate error in the recitals, the guarantee has not lost its contractual efficacy because what the third defendant has obliged himself to become liable for is the repayment of the term loan described in cl 1.1 and 2 thereof. There is thus no requirement or need for the plaintiff to seek rectification as contended by the third defendant. In the case of *Ng Siew Wah & Ors v MAA Holdings Sdn Bhd & Anor* [1985] 2 MLJ 332, Mohd Azmi SCJ at p 334 had this to say about rectification in a case where a dispute had arisen on the construction of a document as a result of an obvious typographical error:

> Be that as it may, it is an established principle that rectification is not necessary if there is obvious mistake or misnomer in a document. No court will allow people to take advantage of a misnomer or typing error when everyone knows what was intended. Thus in *Nittan v Solent Steel* [1981] 1 Lloyd's Rep 633, Lord Brightman LJ said at p 639:
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> > 'In my opinion, in construing a document, the court is at liberty, as a matter of construction, to correct a misnomer. A misnomer is not, in my view, necessarily a mistake which requires the equitable remedy of rectification. The misnomer may be a mere clerical error. A simple example would be the use in a conveyance of the expression 'the vendor' when clearly 'the purchaser' was intended. It is not necessary to rectify the conveyance to enable it to be read and take effect as the parties plainly intended.'

I, therefore, find that although on a first reading, the assertion raised gives the semblance of a defence, on closer examination is devoid of any merit so as to render it not triable.

A In view of what I have stated above, I find that the third defendant has not raised any issues which are fit or suitable for trial. I accordingly allow this appeal, set aside the order of the learned deputy registrar and order that judgment be entered for the plaintiff in the terms applied for. I also award costs here and before the deputy registrar to the appellant.

B *Appeal allowed.*

Reported by Wong Siok Chin

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